

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 3:19-00078-001

VERSUS

JUDGE TERRY A. DOUGHTY

DELEYOUNG D. MILLER (01)

MAG. JUDGE KAREN L. HAYES

MEMORANDUM RULING

The Defendant Deleyoung D. Miller (“Miller”) filed a Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 [Doc. No. 126]. The United States filed its Response [Doc. No. 130]. For the reasons set forth herein, Miller’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 is DENIED.

I. BACKGROUND

On August 28, 2019, a federal Grand Jury returned a Superseding Indictment charging Miller and others with Conspiracy to Distribute Methamphetamine (Count 1); Distribution of Methamphetamine (Count 2); Possession With Intent to Distribute Methamphetamine (Count 3); Possession of a Firearm in Furtherance of a Drug Trafficking Offense (Count 4); and Felon in Possession of a Firearm (Count 5) [Doc. No. 60].

On September 12, 2019, pursuant to a written plea agreement, Miller plead guilty to Count 1 and Count 4 of the Superseding Indictment [Doc. No. 87]. The Court adopted the Report and Recommendation of the United States Magistrate Judge regarding the guilty plea [Doc. No. 93].

On January 8, 2020, Miller was sentenced to 188 months of imprisonment as to Count 1 and 60 months imprisonment as to Count 4, with the sentences to run consecutively [Doc. No. 122]. On October 7, 2020, Miller filed this § 2255 Motion [Doc. No. 126].

II. LEGAL ANALYSIS

In a motion to vacate, set aside or correct sentence, a defendant may present four cognizable grounds which include the following: (1) constitutional issues, (2) challenges to the district court's jurisdiction to impose the sentence, (3) challenges to the length of a sentence in excess of the statutory maximum, and (4) claims that the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255; *United States v. Placente*, 81 F.3d 555 (5th Cir. 1996). In Miller's motion, he maintains he received ineffective assistance of counsel for counsel failing to raise the United States Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019).

Allegations concerning the performance of one's attorney can be considered under 28 U.S.C. § 2255. *Massaro v. United States*, 538 U.S. 500 (2003). (Claims of ineffective assistance of counsel may be raised for the first time in a proceeding under 28 U.S.C. § 2255); *United States v. Ramos* 801 F. App'x 216 (5th Cir. 2020) (citing *Massaro* for proposition that "[t]he Supreme Court has emphasized that a 28 U.S.C. § 2255 motion is the preferred method for raising claims of ineffective assistance of counsel".) In *Strickland v. Washington*, 466 U.S. 6687 (1984), the United States Supreme Court established the test for determining ineffective assistance of counsel. Pursuant to the *Strickland* test, a defendant must establish that his attorney's actions were objectively unreasonable and that his attorney's unreasonable actions resulted in prejudice. *id.* at 687.

The defendant must establish both prongs of this test. *Carter v. Johnson*, 131 F.3d 452 (5th Cir. 1997) (“Failure to prove either deficient performance or actual prejudice is fatal to an ineffective assistance claim.”); *Armstead v. Scott*, 37 F.3d 202 (5th Cir. 1994).

Miller contends he was denied effective assistance of counsel because his attorney failed to raise the United States Supreme Court’s decision in *United v. Davis*, 139 S.Ct. 2319 (2019). In *Davis*, the United States Supreme Court held that the definition of a “crime of violence” in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague. However, in this case, Miller did not plead to the residual clause that was held unconstitutional in *Davis*. Miller plead guilty to the “elements clause” in 18 U.S.C. § 924(c)(3)(A).

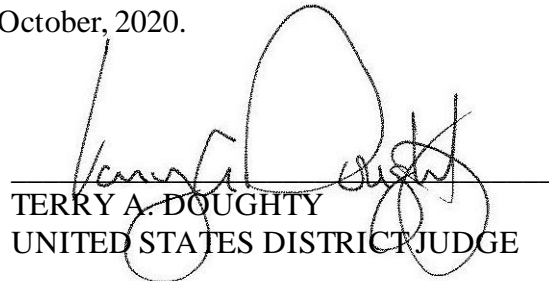
The *Davis* decision does not apply to a defendant who pleaded guilty to using or carrying a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). *Goldman v. United States* 2019 WL 6879325 (N.D. Tex. Nov. 6, 2019).

Since *Davis* does not apply to Miller’s situation, his claim of ineffective assistance of counsel is DENIED. Miller’s attorney cannot be ineffective for failing to raise a meritless issue. *Sones v. Hargett* 61 F.3d 410 (5th Cir. 1995).

III. CONCLUSION

For the above and foregoing reasons, Defendant Deleyoung D. Miller’s Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 [Doc. No. 126] is DENIED.

MONROE, LOUISIANA this 22nd day of October, 2020.


TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE